



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2017-0215; FRL-9975-32-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Removal of Clean Air Interstate Rule (CAIR) Trading Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia (Virginia). The revision requests EPA remove from the Virginia SIP regulations from the Virginia Administrative Code that established trading programs under the Clean Air Interstate Rule (CAIR). The EPA-administered trading programs under CAIR were discontinued on December 31, 2014, upon the implementation of the Cross-State Air Pollution Rule (CSAPR), which was promulgated by EPA to replace CAIR. CSAPR established federal trading programs for sources in multiple states, including Virginia, that replace the CAIR state and federal trading programs. The submitted SIP revision requests removal of state regulations that implemented the CAIR annual nitrogen oxides (NO_x), ozone season NO_x, and annual sulfur dioxide (SO₂) trading programs from the Virginia SIP (as CSAPR has replaced CAIR). EPA is approving the SIP revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2017-0215. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Sara Calcinore, (215) 814-2043, or by e-mail at calcinore.sara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In 2005, EPA promulgated CAIR (70 FR 25162, May 12, 2005) to address transported emissions that significantly contributed to downwind states’ nonattainment and interfered with maintenance of the 1997 ozone and fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS). CAIR required 28 states, including Virginia, to revise their SIPs to reduce emissions of NO_x and SO₂, precursors to the formation of ambient ozone and PM_{2.5}. Under CAIR, EPA provided model state rules for separate cap-and-trade programs for annual NO_x, ozone season NO_x, and annual SO₂. The annual NO_x and annual SO₂ trading programs were designed to address transported PM_{2.5} pollution, while the ozone season NO_x trading program was designed to address transported ozone pollution. EPA also promulgated CAIR federal implementation plans (FIPs) with CAIR federal trading programs that would address each state’s CAIR

requirements in the event that a CAIR SIP for the state was not submitted or approved (71 FR 25328, April 28, 2006). Generally, both the model state rules and the federal trading program rules applied only to electric generating units (EGUs), but in the case of the model state rule and federal trading program for ozone season NO_x emissions, each state had the option to submit a CAIR SIP revision that expanded applicability to include certain non-EGUs¹ that formerly participated in the NO_x Budget Trading Program under the NO_x SIP Call.² Virginia submitted, and EPA approved, a CAIR SIP revision based on the model state rules establishing CAIR state trading programs for annual SO₂, annual NO_x, and ozone season NO_x emissions, with certain non-EGUs included in the state's CAIR ozone season NO_x trading program. *See* 72 FR 73602 (December 28, 2007). Because Virginia's NO_x ozone season trading program under CAIR included non-EGUs that previously participated in the NO_x budget trading program under the NO_x SIP Call, this CAIR program satisfied Virginia's obligations under the NO_x SIP Call as to both EGUs and non-EGUs. However, even though the NO_x SIP Call requirements were being met by the CAIR program, Virginia's state NO_x Budget Trading Program rule also remains part of the state's approved SIP. *See* 76 FR 68638 (November 7, 2011).

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008, but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR. *North Carolina v. EPA*, 531 F.3d 896, *modified*, 550 F.3d 1176 (2008). The ruling allowed CAIR to remain in effect temporarily until a replacement rule consistent with the court's opinion was developed. While EPA worked on developing a

¹ These non-EGUs are generally defined in the NO_x SIP Call as stationary, fossil fuel-fired boilers, combustion turbines, or combined cycle systems with a maximum design heat input greater than 250 million British thermal units per hour (MMBtu/hr).

² In October 1998, EPA finalized the "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone" –commonly called the NO_x SIP Call. *See* 63 FR 57356 (October 27, 1998).

replacement rule, the CAIR program continued as planned with the NO_x annual and ozone season programs beginning in 2009 and the SO₂ annual program beginning in 2010.

On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated CSAPR to replace CAIR in order to address the interstate transport of emissions contributing to nonattainment and interfering with maintenance of the two air quality standards covered by CAIR as well as the 2006 PM_{2.5} NAAQS. CSAPR required EGUs in affected states, including Virginia, to participate in federal trading programs to reduce annual SO₂, annual NO_x, and/or ozone season NO_x emissions. The rule also contained provisions that would sunset CAIR-related obligations on a schedule coordinated with the implementation of the CSAPR compliance requirements. CSAPR was intended to become effective January 1, 2012; however, the timing of CSAPR's implementation was impacted by a number of court actions.

Numerous parties filed petitions for review of CSAPR in the D.C. Circuit, and on December 30, 2011, the D.C. Circuit stayed CSAPR prior to its implementation and ordered EPA to continue administering CAIR on an interim basis. On August 21, 2012, the D.C. Circuit issued its ruling, vacating and remanding CSAPR to EPA and ordering continued implementation of CAIR. *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012). The D.C. Circuit's *vacatur* of CSAPR was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the Supreme Court's ruling. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects but remanded certain state emissions budgets, including Virginia's Phase 2 budget for ozone season NO_x emissions. *EME Homer City Generation, L.P. v. EPA (EME Homer City II)*, 795 F.3d 118, 138 (D.C. Cir. 2015).

Throughout the initial round of D.C. Circuit proceedings and the ensuing Supreme Court proceedings, the stay on CSAPR remained in place, and EPA continued to implement CAIR. Following the April 2014 Supreme Court decision, EPA filed a motion asking the D.C. Circuit to lift the stay in order to allow CSAPR to replace CAIR in an equitable and orderly manner while further D.C. Circuit proceedings were held to resolve remaining claims from petitioners. Additionally, EPA's motion requested delay, by three years, of all CSAPR compliance deadlines that had not passed as of the approval date of the stay. On October 23, 2014, the D.C. Circuit granted EPA's request, and on December 3, 2014 (79 FR 71663), in an interim final rule, EPA set the updated effective date of CSAPR as January 1, 2015, and delayed the implementation of CSAPR Phase I to 2015 and CSAPR Phase 2 to 2017. In accordance with the interim final rule, EPA stopped administering the CAIR state and federal trading programs with respect to emissions occurring after December 31, 2014, and EPA began implementing CSAPR on January 1, 2015.³

In October 2016, EPA promulgated the CSAPR Update (81 FR 74504, October 26, 2016) to address interstate transport of ozone pollution with respect to the 2008 ozone NAAQS, and issued FIPs that established or updated ozone season NO_x budgets for 22 states, including Virginia. Starting in January 2017, the CSAPR Update budgets were implemented via modifications to the CSAPR NO_x ozone season allowance trading program that was established under the original CSAPR.

As noted above, starting in January 2015, the CSAPR federal trading programs for annual NO_x, ozone season NO_x, and annual SO₂ were applicable in Virginia. Thus, since January 1, 2015,

³ EPA solicited comment on the interim final rule and subsequently issued a final rule affirming the amended compliance schedule after consideration of comments received. 81 FR 13275 (March 14, 2016).

EPA has not administered the CAIR state trading programs for annual NO_x, ozone season NO_x, or annual SO₂ emissions established by the Virginia regulations.

On January 5, 2017, the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (VADEQ), formally submitted a SIP revision (Revision D16) that requests removal from its SIP of Virginia Administrative Code regulations including 9 VAC 5 Chapter 140: Part II-NO_x Annual Trading Program; Part III-NO_x Ozone Season Trading Program; and Part IV-SO₂ Annual Trading Program (Sections 5-140-1010 through 5-140-3880), which implemented the CAIR annual NO_x, ozone season NO_x, and annual SO₂ trading programs in Virginia.⁴

On September 28, 2017, EPA simultaneously published a notice of proposed rulemaking (NPR) (82 FR 45241) and a direct final rule (DFR) (82 FR 45187) for Virginia approving, as a SIP revision, the removal of the regulations under 9 VAC 5 Chapter 140: Part II-NO_x Annual Trading Program; Part III-NO_x Ozone Season Trading Program; and Part IV-SO₂ Annual Trading Program (Sections 5-140-1010 through 5-140-3880), which implemented the CAIR annual NO_x, ozone season NO_x, and annual SO₂ trading programs in Virginia, from the Virginia SIP. EPA received adverse comments on the rulemaking and withdrew the DFR prior to the effective date of November 27, 2017. *See* 82 FR 55052 (November 20, 2017). In the NPR, EPA had proposed to approve the SIP revision, which would remove from the Virginia SIP the regulations under 9 VAC 5 Chapter 140 that implemented the CAIR annual NO_x, ozone season NO_x, and annual SO₂ trading programs. In this final rulemaking, EPA is responding to the

⁴ EPA notes that Virginia's January 5, 2017 SIP revision does not request removal of the regulations under 9 VAC 5 Chapter 140: Part I-NO_x Budget Trading Program, which include regulations addressing the continuous emission monitoring requirements of 40 CFR part 75 for non-EGUs covered by the NO_x SIP Call (Part 75 rule). Therefore, this rulemaking action does not apply to regulations under 9 VAC 5 Chapter 140: Part I-NO_x Budget Trading Program, including those related to the part 75 rule.

comments submitted on the proposed revision to the Virginia SIP and is approving, as a SIP revision, the removal of these regulations from the Virginia SIP.

II. Summary of SIP Revision and EPA Analysis

VADEQ's January 5, 2017 SIP revision requests the removal of regulations from the Virginia SIP under 9 VAC 5 Chapter 140: Part II-NO_x Annual Trading Program, Part III-NO_x Ozone Season Trading Program, and Part IV-SO₂ Annual Trading Program (Sections 5-140-1010 through 5-140-3880), which implemented the state's CAIR annual NO_x, ozone season NO_x, and annual SO₂ trading programs. EPA has not administered the trading programs established by these regulations since January 1, 2015, when the CSAPR trading programs replaced the CAIR programs, and the state CAIR regulations have been repealed in their entirety from the Virginia Administrative Code. The amendments removing these regulations were adopted by the State Air Pollution Control Board on September 9, 2016, and were effective as of November 16, 2016.

As noted previously, the CAIR annual NO_x, ozone season NO_x, and annual SO₂ trading programs addressed interstate transport of emissions under the 1997 PM_{2.5} NAAQS and the 1997 ozone NAAQS. The D.C. Circuit remanded CAIR to EPA for replacement, and in response EPA promulgated CSAPR which, among other things, fully addresses Virginia's interstate transport obligation under the 1997 PM_{2.5} NAAQS. *See* 76 FR at 48210. EPA stopped administering the CAIR trading programs after 2014 and instead began implementing the CSAPR trading programs in 2015. EPA had also determined that CSAPR would fully address Virginia's interstate transport obligation under the 1997 ozone NAAQS, *id.*, but the D.C. Circuit later remanded Virginia's CSAPR Phase 2 budget for ozone season NO_x, finding that the CSAPR rulemaking record did not support EPA's determination of a transport obligation under the 1997

ozone NAAQS for Virginia in CSAPR Phase 2, *EME Homer City II*, 795 F.3d at 129-30, and in response to the Court's decision EPA withdrew Virginia's remanded budget.⁵ Thus, none of Virginia's three CAIR state rules still plays any role in addressing the transport obligations that the state initially adopted the rules to address: the CAIR trading programs are no longer being administered; the state's transport obligation under the 1997 PM_{2.5} NAAQS is now being addressed by the CSAPR trading programs for annual NO_x and SO₂; and the state no longer has a transport obligation under the 1997 ozone NAAQS.

Virginia's CAIR trading programs for annual NO_x and SO₂ were adopted only to address Virginia's transport obligation under the 1997 PM_{2.5} NAAQS, one of the two NAAQS underlying EPA's CAIR rules. In contrast, Virginia's CAIR trading program for ozone season NO_x was adopted to address not only Virginia's transport obligation under the 1997 ozone NAAQS (the other NAAQS underlying EPA's CAIR rules), but also Virginia's ongoing obligations under the NO_x SIP Call.⁶ Specifically, under the NO_x SIP Call the Virginia SIP, first, must include enforceable control measures for large EGUs and large non-EGUs and, second, must require those sources to monitor and report ozone season NO_x emissions in accordance with 40 CFR part 75. *See* 40 CFR 51.121(f)(2) and (i)(4). Virginia's EGUs are currently subject to requirements under the federal CSAPR trading program for ozone season NO_x that address the purpose of these NO_x SIP Call requirements as to EGUs, but because Virginia's non-EGUs are not subject to that CSAPR trading program, the state must meet these requirements for non-EGUs through other SIP provisions.

With respect to the NO_x SIP Call requirement for the SIP to include part 75 monitoring

⁵ The replacement ozone season NO_x budget established for Virginia in the CSAPR Update addresses (in part) the state's transport obligation under the 2008 ozone NAAQS rather than the 1997 ozone NAAQS.

⁶ The NO_x SIP Call addresses states' transport obligations under the 1979 ozone NAAQS.

requirements, Virginia's SIP still includes the state's NO_x Budget Trading Program rules, and those rules continue to require non-EGUs to monitor and report ozone season NO_x emissions under part 75 even though EPA is no longer administering the trading program provisions of the state's rules. Thus, removal of the state's CAIR rules for ozone season NO_x emissions from Virginia's SIP will not eliminate the required SIP provisions for part 75 monitoring by non-EGUs under the NO_x SIP Call because the SIP will still include the equivalent provisions in the state's NO_x Budget Trading Program rules.

With respect to the NO_x SIP Call requirement for the SIP to include enforceable control measures for non-EGUs, Virginia formerly met the requirement by including these sources in the state's CAIR trading program for ozone season NO_x emissions. When EPA initially replaced the CAIR trading programs with the CSAPR trading programs in 2015, the CSAPR regulations did not provide an option for states to expand trading program applicability to include these non-EGUs. In the CSAPR Update, EPA restored the option to include these EGUs in the current CSAPR trading program for ozone season NO_x starting in 2019, but Virginia has not elected this option. Accordingly, since January 1, 2015, when the CSAPR federal trading program became effective in Virginia and EPA stopped administering the CAIR trading programs, the Virginia SIP has not contained an effective regulation addressing the NO_x SIP Call requirement for enforceable control measures for non-EGUs that formerly participated in the state's NO_x Budget Trading Program. However, Virginia's request in its January 5, 2017 SIP seeking removal from its SIP of 9 VAC 5 Chapter 140: Part III-NO_x Ozone Season Trading Program and EPA's action to approve the January 5, 2017 submittal did not create this gap in coverage under the Virginia SIP. Rather, as described above, the gap predates the SIP submittal at issue in this action, and approval of the SIP submittal will not exacerbate or otherwise affect the gap. According to

Virginia, the Commonwealth is in the process of drafting a regulation to address the Commonwealth's obligations under the NO_x SIP Call (including its obligation to address these non-EGUs which formerly participated in the state's CAIR trading program for ozone season NO_x emissions). In remedying its provisions to address the NO_x SIP Call, Virginia must satisfy the requirements of 40 CFR 51.121(f)(2) for the SIP to include enforceable control measures for non-EGUs that are stationary, fossil fuel-fired boilers, combustion turbines, or combined cycle systems with a maximum design heat input greater than 250 MMBtu/hr. EPA expects Virginia will submit such provisions to EPA to be included in Virginia's SIP, and EPA will review and act on any such SIP submittal from Virginia addressing the Commonwealth's NO_x SIP Call obligations in a separate rulemaking.

In summary, Virginia's CAIR rules at 9 VAC 5, Chapter 140: Part II-NO_x Annual Trading Program, Part III-NO_x Ozone Season Trading Program, and Part IV-SO₂ Annual Trading Program (sections 5-140-1010 through 5-140-3880) no longer play any role in addressing the transport obligations that the rules were adopted to address, and removal of the rules from the SIP will not introduce any new gaps with respect to the additional purposes that the rules served with respect to addressing the state's ongoing obligations under the NO_x SIP Call. EPA therefore finds Virginia's January 5, 2017 SIP revision requesting removal of these CAIR rules from the SIP approvable in accordance with section 110 of the CAA. The public comments received on the NPR are discussed in Section III of this rulemaking action.

III. Public Comments and EPA's Response

EPA received two public comments on our September 28, 2017 action to approve Virginia's January 5, 2017 SIP submittal that requests the removal of the regulations under 9 VAC 5

Chapter 140: Part II-NO_x Annual Trading Program; Part III-NO_x Ozone Season Trading Program; and Part IV-SO₂ Annual Trading Program (Sections 5-140-1010 through 5-140-3880), which implemented the state's CAIR annual NO_x, ozone season NO_x, and annual SO₂ trading programs, from the Virginia SIP. The comment submitted on October 7, 2017 was not specific to this rulemaking action and will not be addressed here.

Comment: The commenter stated that "EPA needs to ensure that the NO_x SIP call sources" are addressed in the Virginia SIP. The commenter also requested that EPA not remove CAIR in Virginia, citing its public health benefits.

EPA Response to Comment: As discussed in Section II, the CAIR trading programs are no longer being administered, and for that reason removing Virginia's CAIR rules from the state's SIP will have no consequences for any source's operations or emissions or for public health. EPA also notes that removal of the state's CAIR rules from the state's SIP does not eliminate requirements for the state's EGUs and non-EGUs to monitor and report their ozone season NO_x emissions in accordance with 40 CFR part 75 as required under the NO_x SIP Call. The EGUs continue to be subject to part 75 requirements under the current CSAPR trading program rules, and the non-EGUs continue to be subject to part 75 requirements under the state's NO_x Budget Trading Program rules, which are still included in the state's SIP.

EPA agrees that under the NO_x SIP Call, the Virginia SIP must include enforceable control measures for ozone season NO_x emissions from non-EGUs, such as stationary, fossil fuel-fired boilers, combustion turbines, or combined cycle systems with a maximum design heat input greater than 250 MMBtu/hr, that formerly participated in the state's NO_x SIP Call trading program and CAIR trading program for ozone season NO_x emission. This requirement for the

SIP to include enforceable control measures was formerly met by the SIP provisions requiring these sources to participate in the state's NO_x Budget Trading Program and then the state's CAIR trading program for ozone season NO_x emissions. However, since 2015, when EPA began implementing the CSAPR trading programs and stopped administering the CAIR trading programs in response to the D.C. Circuit's remand of CAIR, Virginia's SIP has not included enforceable control measures for NO_x emissions from these non-EGUs. This gap in SIP coverage was caused by the discontinuation of the CAIR trading programs and predates the SIP submittal at issue in this action. Removing the state's CAIR rules from the SIP at this time will not exacerbate or otherwise affect this pre-existing lack of enforceable control measures in the SIP. As stated above in Section II, according to Virginia, the Commonwealth is in the process of drafting a regulation to address the Commonwealth's obligation under the NO_x SIP Call with respect to NO_x emissions from these non-EGUs, which includes the requirement for enforceable control measures. EPA expects Virginia will submit such provisions to EPA to be included in Virginia's SIP, and EPA will review and act on any such SIP submittal from Virginia addressing the Commonwealth's NO_x SIP Call obligations in a separate rulemaking.

IV. Final Action

EPA is approving the Virginia SIP revision submitted on January 5, 2017 that sought removal from the Virginia SIP of regulations under 9 VAC 5 Chapter 140: Part II-NO_x Annual Trading Program; Part III-NO_x Ozone Season Trading Program; and Part IV-SO₂ Annual Trading Program (Sections 5-140-1010 through 5-140-3880), which implemented the state's CAIR annual NO_x, ozone season NO_x, and annual SO₂ trading programs. Removal of these regulations from the Virginia SIP is in accordance with section 110 of the CAA. This rule, which responds to the adverse comments received, finalizes our proposed approval of Virginia's January 5, 2017

SIP submittal.

V. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) “privilege” for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed.

Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information “required by law,” including documents and information “required by federal law to maintain program delegation, authorization or approval,” since Virginia must “enforce federally authorized environmental programs in a manner that is no less

stringent than their federal counterparts. . . .” The opinion concludes that “[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.1-1199, provides that “[t]o the extent consistent with requirements imposed by federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General’s January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C.

804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action removing from the Virginia SIP regulations under Sections 5-140-1010 through 5-140-3880 of 9 VAC 5 Chapter 140 that implemented the CAIR annual NO_x, ozone season NO_x, and annual SO₂ trading programs may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 23, 2018.

Cosmo Servidio,
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart VV—Virginia

§52.2420 [Amended]

2. In §52.2420, the table in paragraph (c) is amended by:

a. Removing the table heading “Part II NO_x Annual Trading Program”; the table subheading “Article 1 CAIR NO_x Annual Trading Program General Provisions” and the entries “5-140-1010” through “5-140-1080”; the table subheading “Article 2 CAIR-designated Representative for CAIR NO_x Sources” and the entries “5-140-1100” through “5-140-1150”; the table subheading “Article 3 Permits” and the entries “5-140-1200” through “5-140-1240”; the table subheading “Article 5 CAIR NO_x Allowance Allocations” and the entries “5-140-1400” through “5-140-1430”; the table subheading “Article 6 CAIR NO_x Allowance Tracking System” and the entries “5-140-1510” through “5-140-1570”; the table subheading “Article 7 CAIR NO_x Allowance Transfers” and the entries “5-140-1600” through “5-140-1620”; the table subheading “Article 8 Monitoring and Reporting” and the entries “5-140-1700” through “5-140-1750”; the table subheading “Article 9 CAIR NO_x Opt-in Units” and the entries “5-140-1800” through “5-140-1880”.

b. Removing the table heading “Part III NO_x Ozone Season Trading Program”; the table subheading “Article 1 CAIR NO_x Ozone Season Trading Program General Provisions” and the entries “5-140-2010” through “5-140-2080”; the table subheading “Article 2 CAIR-Designated Representative for CAIR NO_x Ozone Season Sources” and the entries “5-140-2100” through “5-

140-2150”; the table subheading “Article 3 Permits” and the entries “5-140-2200” through “5-140-2240”; the table subheading “Article 5 CAIR NO_x Ozone Season Allowance Allocations” and the entries “5-140-2400” through “5-140-2430”; the table subheading “Article 6 CAIR NO_x Ozone Season Allowance Tracking System” and the entries “5-140-2510” through “5-140-2570”; the table subheading “Article 7 CAIR NO_x Ozone Season Allowance Transfers” and the entries “5-140-2600” through “5-140-2620”; the table subheading “Article 8 Monitoring and Reporting” and the entries “5-140-2700” through “5-140-2750”; the table subheading “Article 9 CAIR NO_x Ozone Season Opt-in Units” and the entries “5-140-2800” through “5-140-2880”.

c. Removing the table heading “Part IV SO₂ Annual Trading Program”; the table subheading “Article 1 CAIR SO₂ Trading Program General Provisions” and the entries “5-140-3010” through “5-140-3080”; the table subheading “Article 2 CAIR-designated Representative for CAIR SO₂ Sources” and the entries “5-140-3100” through “5-140-3150”; the table subheading “Article 3 Permits” and the entries “5-140-3200” through “5-140-3240”; the table subheading “Article 5 CAIR SO₂ Allowance Allocations” and the entries “5-140-3400” through “5-140-3420”; the table subheading “Article 6 CAIR SO₂ Allowance Tracking System” and the entries “5-140-3510” through “5-140-3570”; the table subheading “Article 7 CAIR SO₂ Allowance Transfers” and the entries “5-140-3600” through “5-140-3620”; the table subheading “Article 8 Monitoring and Reporting” and the entries “5-140-3700” through “5-140-3750”; the table subheading “Article 9 CAIR SO₂ Opt-in Units” and the entries “5-140-3800” through “5-140-3880”.

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